STATE OF WASHINGTON

BEFORE THE PUBLIC EMPLOYMENT RELATIONS COMMISSION

CITY OF BELLINGHAM, Employer.	)	
JERRY WOLCOTT, Complainant, vs. WASHINGTON STATE COUNCIL OF COUNTY AND CITY EMPLOYEES, Respondent.	)	CASE 14899-U-99-3755 DECISION 6951 - PECB ORDER OF DISMISSAL
JERRY WOLCOTT, Complainant, vs. CITY OF BELLINGHAM, Respondent.	)	CASE 14898-U-99-3754 DECISION 6950 - PECB ORDER OF DISMISSAL

On November 22, 1999, Jerry Wolcott filed unfair labor practice charges with the Public Employment Relations Commission, under Chapter 391-45 WAC. Two separate case numbers were assigned, consistent with long-standing Commission procedure in situations where two separate respondents are named:

- Allegations against the Washington State Council of County and City Employees (WSCCCE or union) have been processed in Case 14899-U-99-3755;
- Allegations against the City of Bellingham (employer) have been processed in Case 14898-U-99-3754.

The cases were reviewed together under WAC 391-45-110,[1] and a deficiency notice was issued with respect to both cases on January 13, 2000. Wolcott was given a period of 14 days in which to file and serve amended complaints which stated causes of action, or face dismissal of the complaints.

An amended complaint filed on January 26, 2000, has been reviewed under WAC 391-45-110.[2] For the reasons indicated below, the complaint and amended complaint do not state causes of action, and are dismissed.

BACKGROUND

Jerry Wolcott is identified as an employee of the City of Bellingham, whose position is included in a bargaining unit represented by the union. Wolcott is further identified as being both a member and officer of the local union affiliated with the WSCCCE. Wolcott's allegations concern the development and implementation of a new job classification system to be applied to his position and others covered by the employer's civil service system.

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[1] At this stage of the proceedings, all of the facts alleged in the complaint are assumed to be true and provable. The question at hand is whether, as a matter of law, the complaint states a claim for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

[2] The employer volunteered a response to the complaint, in the form of a letter filed on December 22, 1999. The agency staff does not "investigate" complaints in a manner which would be familiar to those who practice before the National Labor Relations Board, and does not pass judgment on the quality of evidence available to support a complaint. Thus, the processing of a complaint under WAC 391-45-110 does not include consideration of factual defenses asserted in response to a complaint.

DISCUSSION

The Form of the Complaint

WAC 391-45-050 calls for a complainant to provide a "clear and concise" statement of the facts alleged to constitute unfair labor practices. The Commission and its staff occupy the "impartial" role in all cases processed by the agency, while responsibility for both (1) development of theories, and (2) presentation of evidence and arguments, remains with the complainant.

In this case, facts are set forth in numbered paragraphs, as well as in numerous other documents. The sheer volume of the material makes it difficult to discern what is intended. The Commission staff is not at liberty to take on advocacy responsibilities such as assembling a coherent presentation, filling in gaps, or making leaps of logic. Thus, the form of the complaint is, itself, a hindrance in this case.

The Allegations

Background Materials -

Some of the allegations simply fail to set forth anything unlawful. Paragraph 3 refers to a letter of agreement, by which the employer and union agreed in 1997 to establish a joint committee to oversee the development of a new job classification system, to implement that new system on a pilot project basis, and to evaluate results and recommend implementation of a system-wide plan. Paragraph 4 sets forth the background in which that agreement was negotiated. Paragraph 5 refers to the existing collective bargaining agreement, which provides for adherence to the letter of agreement. Paragraph 12 alleges that the members of the joint committee were required to sign an agreement to maintain the confidentiality of matters before

it. The fact that an employer has a duty to bargain with a union concerning the "wages, hours and working conditions" does not preclude either utilization of pilot programs affecting only part of a bargaining unit, or maintaining confidentiality as to negotiations leading up to a final agreement.

Refusal to Bargain Allegations -

Some of the allegations concern the bargaining relationship between the employer and union. Paragraph 11 alleges that negotiations have not been opened under a contractual reopener provision to establish salaries in 1999. Paragraph 15 restates portions of the collective bargaining agreement dealing with waivers. Paragraph 25 alleges that a union trustee notified the employer that negotiations leading to the letter of agreement had not been authorized by the union. However, the collective bargaining duty exists between the employer and a union recognized or certified as exclusive bargaining representative, not between the employer and its employees. While the statute would support a demand for separate bargaining for each separate bargaining unit, nothing in the statute precludes an employer and union from agreeing to negotiate in a different format, or precludes an employer or union from waiving its bargaining rights. In fact, multi-unit and even multi-employer negotiations occur routinely in both the private and public sectors.

Some of the paragraphs concern the tactics used in bargaining. Paragraphs 26 through 28 describe a series of informational meetings chaired by the mayor on October 13, 1999. It is alleged that a bargaining unit employee voiced her opinion about the limited authority of the joint committee, and that the mayor offered to provide retroactive pay at the new classification rates if the agreement were to be adopted. The mayor is alleged to have asserted that this was the respondent's last, best and final offer.

Again, however, the duty to bargain can only be enforced by the employer and union. Clark County, Decision 3200 (PECB, 1989).

Violation of Contract Claims -

Several of the allegations appear to merely be "violation of contract" claims: Paragraph 8 alleges that no pilot project was ever adopted; paragraph 9 describes an employee's request for a job audit; paragraph 10 alleges that Article 7.5 of the collective bargaining agreement was intended to continue in effect while a classification system was being developed, and that job audits were no longer given any effect after the resignation of the employer's human resources director at an unspecified time; paragraphs 19 through 23 cite parts of the collective bargaining agreement, the proposed letter of agreement, the employer's city charter, and an attorney's opinion. The employer is also alleged to have denied the requests of certain employees for job audits. It has long been established, however, that the Public Employment Relations Commission does not assert jurisdiction to remedy violations of collective bargaining agreements through the unfair labor practice provisions of the statute. City of Walla Walla, Decision 104 (PECB, 1976).

Lack of Legal Standing to Pursue Rights of Others -

Some of the allegations concern the rights of another employee, which this complainant has no legal standing to pursue. Paragraphs 26 through 28 allege that the mayor instructed a supervisor to exclude an employee (other than Wolcott) who had attended one informational meeting from attending other informational meetings that day. That individual would need to file and process his own complaint if he claims to have been restrained or coerced in the exercise of rights guaranteed by the collective bargaining statute. See, C-Tran, Decision 4005 (PECB, 1992).

Allegations Involving Internal Union Affairs -
Unions can acquire status and rights under a collective bargaining law administered by the Commission, but they are fundamentally private organizations. A union's constitution and/or bylaws are the contract among its members for how the affairs of the organization are to be conducted, and disputes about such matters must be resolved through procedures internal to the organization, or through the courts. The Commission has exceedingly limited jurisdiction concerning internal union affairs. See, Lewis County, Decision 464-A (PECB, 1978).[3] In that context:

Paragraph 1 of the statement of facts alleges Wolcott has exhausted all internal union procedures to resolve issues raised in the complaint, without success, and makes reference to a letter from Chris Dugovich, the president of the WSCCCE. Paragraph 2 asserts that the matters covered by paragraph 1 were also presented to the local union president, and to WSCCCE Representative Jon Stables. The main thrust of extensive correspondence filed with the complaint appears to be employee dissatisfaction with the union's method of setting meetings, attendance at such meetings, and their subject matter. Those are not matters regulated by the Commission.

Paragraph 7 asserts that the structure of the joint committee made it impossible for the WSCCCE to enter into negotiations, because other labor organizations participated in the committee. Paragraph 9 describes the results reported by union committee members at a general membership meeting in June of 1999, including that the study was complete but final determinations would not to be

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[3] The Commission can assert jurisdiction, under Allen v. Seattle Police Officers' Guild, 32 Wn.App 56 (Division 1, 1982), where there are allegations of unlawful discrimination by a union against one or more employees in the bargaining unit it represents, but no such facts are asserted in this case.

divulged until a salary survey was completed. Paragraph 12 alleges that members of the joint committee were required to sign an agreement to maintain the confidentiality of matters before it. Paragraph 13 alleges no specifics were provided at a general membership meeting in September of 1999. Paragraph 14 alleges that no vote was taken on whether to accept the classification plan. Paragraph 16 restates a portion of the union constitution having to do with the right of members to vote on (and have full disclosure with respect to) any agreements affecting their employment status. Paragraph 24 describes union's announcement of meetings for members to learn about and vote on the memorandum of agreement in October 1999. Paragraphs 30 through 33 describe a flyer that was distributed by union stewards to some, but not all, bargaining unit members, and allege that not all union members were provided an opportunity to discuss its contents. The complaint also asserts that the memorandum of agreement was rejected by a vote of the union's members.

Local collective bargaining practices often include ratification of tentative agreements by bargaining unit members, but the statute itself does not require such procedures. Naches Valley School District, Decision 2516 (PECB, 1987), affirmed Decision 2516-A (PECB, 1987). To the extent Wolcott expects more communication from his union, that is a matter of internal union affairs.[4] The outlet provided by the statute for employees who become dissatisfied with their union is to change or decertify the exclusive bargaining representative through proceedings under Chapter 391-25 WAC, where any question concerning representation is decided by majority vote of the employees in the bargaining unit. Questions

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[4] While a union owes a duty of "fair representation" to each employee in a bargaining unit it represents, that does not guaranty each employee will be satisfied by all actions taken by the exclusive bargaining representative. See, City of Pasco, Decision 2327 (PECB, 1986).

about the quality of representation provided by a union are thus for the employees, rather than the Commission, to decide.

Matters to be Decided by Courts -

Some of the allegations concern matters far outside of the jurisdiction of the Public Employment Relations Commission. The name "Public Employment Relations Commission" is sometimes interpreted as implying a broader scope of authority than is actually conferred upon the agency by statute. The Commission's jurisdiction is limited to the resolution of collective bargaining disputes between employers, employees, and unions. The agency does not have authority to resolve each and every dispute that might arise in public employment.

Paragraphs 30 through 33 allege that the employer modified its position on October 18, 1999, by proposing a lump sum payment which is alleged to be an illegal gift of public funds. While the Washington State Constitution prohibits gifts of public funds, the characterization of the respondent's proposal as a violation of that prohibition calls for a legal conclusion that would need to be made by a court. The Commission has no authority or expertise in that arena.

Paragraphs 30 through 33 further allege (and examination of the cited document confirms), that a flyer issued by the employer explained the relationship between the proposed classification system and the employer's civil service system. The complainant appears to claim the employer violated its charter by bargaining limitations on the authority of the civil service commission. A court would need to rule on the claimed violation of the city charter, but would do so in the context of certain rulings established precedents: In Rose v. Erickson, 106 Wa.2d 420 (1986), the Supreme Court of the State of Washington ruled that Chapter

41.56 RCW prevails in the event of a conflict with other statutes; in City of Yakima v. IAFF and YPPA, 117 Wn.2d 655 (1991) (affirming the Commission's decision in City of Yakima, Decision 3503-A (PECB, 1990)), the Supreme Court ruled that civil service rules and procedures affecting mandatory subjects of collective bargaining are themselves mandatory subjects of bargaining.

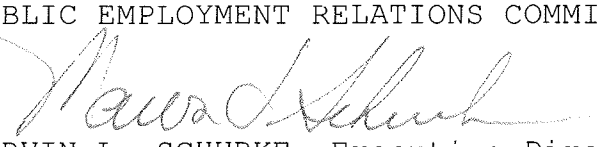
NOW, THEREFORE, it is

ORDERED

The complaints charging unfair labor practices filed in the above-captioned matters are DISMISSED for failure to state claims for relief available through unfair labor practice proceedings before the Public Employment Relations Commission.

Issued in Olympia, Washington, this 1st day of February, 2000.

PUBLIC EMPLOYMENT RELATIONS COMMISSION



MARVIN L. SCHURKE, Executive Director

This order will be the final order of the agency unless a notice of appeal is filed with the Commission under WAC 391-45-350.